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## ABSTRACT

This paper analyzes educational-finance reform in Vermont, which culminated in the passage of Act 60, a comprehensive education and tax reform measure, and the subsequent political furor the act engendered. It outlines the pre-reform background focusing on early civil-society organizations and the unique political landscape in Vermont. The article describes the political actors in the reform debate, such as the League of Women Voters and The Vermont Natural Resources Council, and the various legislative movements these groups championed. Details of failed reform efforts and the many facets of political maneuvering are provided. After elements of bipartisan support of various reform packages fell apart, deliberative discourse fell to the side and political regrouping began in earnest. Corrections through the courts were then sought by financial reformers, and a family sued the state to obtain financial equity among school districts. The resultant victory and the passage of the reform legislation, Act 60, and subsequent backlash are described. The reform process resulted in watershed transformations of political thought and culture in Vermont. Most importantly, the notion of a statewide responsibility for the education of all children was firmly established, supported by a statewide property tax; and the entrenched idea of an inequitable financial share in education was eradicated. (Contains 32 references and notes.) (RJM)

# Interest Group Influences in Advancing and Inhibiting Educational Finance Reform: The Politics of Equity in Vermont's Act 60

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# **Interest Group Influences in Advancing and Inhibiting Educational Finance Reform: The Politics of Equity in Vermont's Act 60**

William J. Mathis<sup>1</sup>

## **I. "TRAILER-PARK ENVY" AND THE "BIAS AGAINST WEALTH AND FAME"**

Author John Irving owns a home in Vermont. As a result of tax and school reform, he was asked to pay taxes at the same rate as towns which had smaller tax bases. In objecting to what he saw as an outrageous increase in his taxes, he stated that he did not want to share taxes with the poor. Furthermore, he described himself as "unrelentingly elitist" and did not want to subject his children to "trailer-park envy." As a result, he started his own private school for his children. Irving further opined that it was "immoral" to have rich towns and rich people pay the same tax rate as the poorer towns. In Irving's words, reform was a Marxist plot.<sup>2</sup>

State Senator Cheryl Rivers sold her old car in the want-ads. Tax reform opponents bought the car. They hauled it to the statehouse, painted anti-reform statements on the sides, and destroyed the car with sledge-hammers.

These are two examples of the political furor that followed the passage of Act 60, a comprehensive education and tax reform measure in Vermont. Prior to reform, such excessive behaviors were not manifest by the poor or other constituencies who were disadvantaged under the earlier and constitutionally inequitable system. Equity was warmly embraced by everyone -- as long as it remained a theoretical principle.

**Increasing Wealth and Tax Disparities - Nevertheless, tax and educational finance reform emerged as the number one state issue. As the state share of educational expenses continued to decrease, the disparities in tax**

burden increased. State economic policy and the pinch of the early 1990s recession caused the gap separating rich and poor to continue to increase. There was a 481% difference in property wealth between the richest and poorest towns -- even when the richest and poorest five per cent of towns were taken out of the comparison.<sup>3</sup> The Washington based Corporation for Economic Development ranked Vermont 46th in fiscal equity.<sup>4</sup>

Nationally, the economic boom of the 1990s benefited the wealthy. The middle class had only the same buying power in 1999 that they had in 1989.<sup>5</sup> Vermont paralleled the national picture. Vermont income increased \$3.9 billion from 1990 to 1995. Of this increase, \$3.4 billion was in incomes over \$60,000. This meant that the top twelve per cent of the population received 87% of the increased income. From a different angle, the top eight per cent of incomes reported 32% of wealth; they received 37% of the wealth in 1997.<sup>6</sup>

Reflecting the gaps in personal wealth and town wealth, education spending varied from \$2961 to \$7726 per pupil. School tax rates ranged from \$0.02 to \$2.40 per hundred of market value with the richest towns enjoying the highest spending and the lowest tax rates.<sup>7</sup>

**Moving Toward Equity** - Recognizing that these growing disparities increased social injustice, denied equal educational opportunities, and abrogated state responsibilities; a small number of citizens, school board members, school administrators and politicians pressed for reform.

Similar to educational finance movements in other states, the reformers did not experience early success. It was only when solid reform majorities were seated in the House and Senate coupled with a timely Supreme Court decision, that comprehensive reform took place.

The successful reform resulted in a statewide, uniform and equitable property tax for all. It also provided a guaranteed yield tax system which assured that towns could still vote to spend as much as they like. However, the extra

amounts voted would be at the same tax burden across the state. This reform was certainly a boon to those towns paying over \$2.00 in taxes for every hundred dollars value of property. They saw their tax rates drop toward the state average of \$1.23. But the affluent towns (known as gold towns), predominantly around ski areas, resorts and bedroom communities, saw their tax rates multiply three or four times. The poorer towns saw the reform as only being fair and redressing historical injustices. However, the richer towns spoke of revolution, the Boston tea party and compared themselves with civil rights leaders in the justice of their cause.

## II. THE PRE-REFORM BACKGROUND

Throughout the last half of the twentieth century, state aid to education followed a saw-tooth pattern. The percentage of education expenditures funded by the state would drift down to around twenty per cent. Since the remaining 80 per cent was drawn almost exclusively from small and narrow-based local property taxes, huge inequities would result and poor towns suffered the most. As more towns "fell off the formula," calls for reform would increase. When critical political mass was achieved, a new state aid formula and a dollop of new money would be thrown into the pot which would raise the state share to between 30% and 35%. The state share never approached the 50% average found across the United States. While such small increases would not achieve equity by any of the commonly used educational finance measures, it was sufficient to achieve the political end and quiet things for awhile. Then, with inflation, weak economies and neglect, the state share would again begin to slide downwards. This pattern repeated itself seven times between 1950 and 1997.

Key to any examination of Vermont politics is the political structure. The basic unit of governance is the town. A geographically small state, Vermont nevertheless has 252 autonomous towns. With "a little democracy at every cross-roads,"<sup>8</sup> a typical town has about 38 square miles and 2400 citizens.<sup>9</sup> In addition to an elected selectboard (town council) and elected school board, the

New England town meeting still thrives. In this annual event, townsfolk get together to practice direct democracy on school budgets, town budgets, and items of special interest.

This strong localism coupled with open meetings laws assures that governmental actions are highly visible. Access in this small and neighborly system is generally excellent. At the same time, this decentralized government can result in uneven application of the laws, local cliques and power fiefs. The degree of knowledge and capability of local officials varies from excellent to poor.

The small and narrow tax base of local towns can and does result in huge inequities. They are not able to smooth inequities across a much broader base. Poor towns in the "Northeast Kingdom" have no commercial tax base. There are towns without even a local "Mom and Pop" store. Meanwhile, tourist towns, such as Manchester, have malls and outlet stores, motels, restaurants and bars, vacation homes and a large tax base. Major ski areas such as Stowe and Killington have similarly strong property tax bases, but this is not true of the poor neighboring towns where low-paid lift operators, chamber-maids and other employees of the ski areas reside.

Whether Democrat or Republican, every governor in the last half of the twentieth century noted the huge inequities in property wealth, the fact that schools funded as much as 80% of their costs from this narrow base, and called for reforms. In various guises and levels of intensity, each of the governors did the simple arithmetic and came up with the inevitable conclusion that equity could only be achieved through some form of statewide property tax. There simply was no other way to provide the necessary level of support.

But none of the myriad reform proposals was enacted. The legislature, composed of 150 House members and 30 Senators, provided a state legislator for every 3000 citizens – one of the lowest ratios in the nation. While this citizen legislature is very accessible to reform proponents, it is just as accessible to

reform opponents. Indicative of the quirky nature of Vermont electoral politics, the 1990 election saw a Republican Governor, a Democratic Lieutenant Governor, and a Socialist Congressman emerge victorious. Until about 1960, Vermont was a staunchly Republican state with the biggest fights being between the two wings of the Republican party. The next thirty years saw a huge diversification in the polity.

### **III. EARLY CIVIL SOCIETY ORGANIZATIONS: A CORE OF COMMON CIVIC INTERESTS EMERGE**

The reformers were a diverse lot who intersected with the political world and most closely aligned themselves with the Democratic party. The Progressive party, with a stronghold in the Burlington area, not only elected a federal Congressman but sent a number of their ranks to the Statehouse. In virtually all cases, the Progressives were unrelentingly reform minded but their ardor was not as uniformly accepted across a state with a Republican tradition and individualistic ways. Political lines were not so cleanly drawn. A number of Republican legislators saw the need for reform and their votes were to prove critical in both the House and the Senate. Many legislators philosophically favored reform, but their level of commitment and activity varied. Most legislators saw and embraced the need for reform provided it did not harm key constituencies.

In 1990, the core of reform agents was small. The emerging civil society groups were diffuse, localized and typically not registered as lobbying groups. With charts and tables in hand, they trooped the state to demonstrate the problems and press for solutions. Often, the audience would be ten to fifteen people and maybe more if covered by the local television cable channel.

**Political Actors** - Political reform energy had been diffuse and unsustained. Governors had recognized the problem but had not been successful in reform initiatives. With a highly localized and informal structure, the

lines between civil society organizations and politicians was blurred. Elected representatives often sat with groups pressing for reform. Reform energy flowed most strongly from the House of Representatives and early legislative efforts are outlined in Section IV below.

**Vermonters Organized for Tax Equity (VOTE)** - In the central part of the state, Steve and Cindy Metcalf (a school administrator and political activist, respectively) formed this statewide civil society organization in February 1996. This was the first time that the disparate actors from around the state were pulled together. The Metcalfs became key actors in pivotal state Senate races in central Vermont. They also organized an early petition drive that gathered 3000 signatures at Town Meetings in March 1996 calling for reform. Cindy Metcalf, by then the Vice-Chair of the state Democratic Party, is given primary credit for the successful statewide Get Out the Vote campaign which saved the reforms in the later 1998 elections.

Allen Gilbert, a school board member and later officer of the state school boards association, heralded the cause in the central and eastern parts of the state. Gilbert was in for the long-haul. He helped write and distribute 75,000 election fliers calling for reform in conjunction with Representatives John Freidin and Paul Cillo.<sup>10</sup> School superintendent and educational finance professor William Mathis, engaged in a number of presentations around the state and conducted a series of statewide debates with business economist Arthur Woolf on the need for reform.

In April 1996, on a statewide educational television program, John Freidin, Paula Wesson, Roberta McDonald, William Mathis and Robert Gensburg presented their views on reform. All were to play later roles in the reforms but Wesson, a Stowe newspaper person, found herself in the opposite camp.

**Fairness in Financing Education (FIFE)** - This group from Norwich, Vermont was spear-headed by Tom and Linda Gray along with Irv Thomae. Gray

later became a key electronic distributor of information and webmaster for reform. Irv Thomae, an engineer with a special talent for statistical analysis, became an advocate and analyst throughout the troubled times.

**League of Women Voters** - The League of Women Voters, with Amy Bond in the forefront, also developed and presented their plans for reform. This group of highly respected women printed brochures, traveled the state and spoke with legislative committees. While not resulting in any substantive legislation, they raised the visibility and need for reform across the state. The fact that they were seen as being outside the role of the activists lent credibility to the reform agenda.<sup>11</sup>

**Voters for Property Tax Reform** - This group developed and distributed brochures at the March 1993 town meetings to bring pressure to bear on a reluctant Senate. This effort was headed by John Freidin and Paul Cillo with Allen Gilbert doing much of the actual work. It was funded out of the pockets of legislators and a major anonymous donor.

**The Vermont Natural Resources Council** - This environmentally focused group, was also a consistent and steadfast proponent of reform.

Deborah Brighton was an exceptional analyst with an interest in land-use taxes and property equity. Her highly credible skills and objectivity resulted in her work being accepted as base data by both proponents and opponents. In the development and implementation of Act 60, she was contracted by the state for particular analyses.

**Professional Organizations** - During the early 1990s, the professional organizations in the state were philosophically supportive but their plans did not gain traction. The Vermont School Boards' Association (VSBA), Vermont Superintendents' Association (VSA) and Vermont-NEA (VT-NEA) teachers union all would adopt generalized position statements favoring reform but did not take an activist position nor advocate for any particular reform. The Vermont

Principals' Association was never active in the reform effort. The greatest momentum was when the VSA, VT-NEA, and League of Cities and Towns met with legislators in 1991 and 1992 to develop reform proposals. When Speaker Wright introduced the statewide teachers' contract in January 1993, these efforts fell apart.

Fearing the Constitution's education provision was too weak, the VSBA called for a constitutional amendment in the early 1990s. The effort got nowhere. As the later court case got underway, the VSBA provided financial assistance for out-of-pocket legal costs. The Vermont League of Cities and Towns, which is the municipal government officials organization, consistently spoke and worked for reform in the early 1990s. They later had problems with the direction of the enacted reforms. The League wanted relief from local property tax burdens but was very protective of town fiefs.

By 1996, despite earlier failed legislative attempts, a small cadre of reform-minded legislators was gathering momentum. Early CSO reform groups emerged and took the first steps in bringing the issues to greater public recognition and acceptance. These same actors were soon found at the center of legal challenges to the system. Later, they developed, implemented and defended the reforms.

#### **IV. FAILED REFORM EFFORTS**

While citizens and politicians of every stripe spoke in favor of reform in the abstract, they often opposed it in the particular. Equality was a warmly embraced and lofty goal -- as long as it could be done without disturbing those with privileged tax circumstances. Unfortunately, painless solutions do not exist. Leaving aside a myriad of small fees and taxes, there are only three major tax revenue sources: income, sales and property taxes.

While clearly the most progressive solution to the problem, the Republican controlled Senate consistently opposed income tax solutions and would only

reluctantly consider sales tax-based reforms. Faithful to national tax movements, conservative forces consistently argued against any shift toward a more progressive or broad-based solution. In their speech, market forces and low taxation would resolve all problems. Income taxes were opposed by wealthy and business interests while sales taxes were opposed by the tourist industry as well as by low-income advocates who saw the tax as regressive. The large number of miscellaneous fees simply did not generate sufficient revenues. The only remaining adequate source was the property tax which was jealousy guarded by local officials as their own. (Although the state had had a statewide property tax from 1793 until 1931, local control advocates found this historical precedent inconvenient).

During the 1980s, Republican Governor Richard Snelling proposed a statewide property tax on all non-residential property but could not get it through the legislature. His opposition was from within his party. Governor Madeleine Kunin achieved partial reforms in 1987 on the rising tide of a robust economy. However, she could not muster support for a recapture provision which would have shared revenues from the property wealthy towns. Hopes were high when Richard Snelling returned to the Governor's office in 1990. Although of different parties, he and House Speaker Ralph Wright planned to develop a comprehensive reform package. Wright appointed a House study committee, chaired by education committee chair Barbara Grimes, to work on this plan over the summer. With Snelling's death in Summer 1991, the plans died with him. Democratic Lieutenant Governor Howard Dean inherited the office and remained throughout the 1990s. Dean did not take the lead on any subsequent reform agenda.

Contrary to educational reform movements across the nation, active reform leadership would be driven from the legislature rather than from the bully pulpit of the executive. However, fundamental reform without strong executive leadership placed a huge and unprecedented burden on reformers.

In 1987, the foundation state aid formula was put in place funded from unanticipated tax monies generated by a healthy economy. By the early 1990s, the economy was in recession and state aid declined. State aid not only deteriorated in relative terms (that is, the percentage of the state share of education funds), it degenerated in absolute terms. The state aid appropriation was cut and schools made painful staffing cuts. Even so, reductions in state aid translated into tax transfers to the local, narrow tax base. As a consequence, inequities increased. Governor Dean defended these cuts and, citing Vermont's per pupil education costs, portrayed schools as wasteful. This point of view was later adopted by the 1995 Republican study group.

The cost-shifting to local property tax bases was not limited to general state aid. Special education, technical education and other programs were either cut, level funded, or funded below inflation. This resulted in further costs being rolled out to local towns. Such cost-shifts generated political dissatisfaction and increased calls for reform by local school boards, taxpayers, and municipal governments. Reform advocates concentrated on building and strengthening relationships among the various organizations and constituencies with a vested interest in reform.

**The "Little Tax Group"** – After the bipartisan Snelling/Wright plan fell apart in 1991, Representative Paul Cillo and other House members continued to work with representatives of organizations interested in tax reform. Members of this group included House members Paul Cillo, Andy Christiansen and Carl Powden. Ellen David-Friedman represented the teachers' union while Steve Jeffries spoke for the League of Cities and Towns and Richard Cate for school superintendents. Along with tax reform advocate Deborah Brighton, this group set forth principles of reform.

With a progressive cast to their thinking, the "Little Tax Group" looked at a graduated income based system, a system where different towns got equal revenues for the same tax effort (horizontal equity), a uniform statewide property

tax, a reduction in the dependence on property taxes, the protection of farm and forest property against development, and a system where no town was "off the formula." The reformers wisely saw that reform could only be sustained if all groups had the same stake in adequate state funding.

Early work had an important and essential by-product. Observers of all political persuasions soon realized that the state's data collection system was chaotic, fragmented and suffered from poor definitions. The most immediate outcome was the regularizing of tax and school expenditure accounts. This solid data base was a vital and essential achievement for later reforms, government efficiency and governmental openness.

The immediate effort came to naught. However, it established the principles that were to show through the reforms five years later.<sup>12</sup>

**The Blue Ribbon Commission** - Although the Snelling/Wright plan collapsed, the inequities and the push of the League of Cities and Towns lead Governor Dean to establish "The Governor's Commission on Municipal and Education Finance" at the end of the 1992 session. The commission was cautiously working toward an income tax based solution. After saying he would let the commission complete its work undisturbed, the Governor told the press in September, 1992 that he would not support an income based plan. Following this set-back, the commission finally made a less effective proposal for a tax on second (or vacation) homes. This plan did not gain broad support.

**Statewide Teachers' Contract** - Speaker Ralph Wright, in the 1993 legislative session, proposed that reform could be achieved if the state funded all teachers' salaries. Since salaries were 53% of costs, a high state share would be guaranteed. All towns would have a stake in state aid and the state share would not erode. After all, it was a guaranteed and contractual agreement with the union. The state would also take-over the nasty business of teacher negotiations and thus free local boards and teachers to concentrate on education. Not

surprisingly, the teachers union found the plan unacceptable and excoriated their fellow teacher and union member Ralph Wright.

The House Ways and Means Committee held hearings throughout 1993 with much of the financial work being done during the summer and fall. Paul Cillo and John Freidin from Ways and Means would team up with David Larsen and Carl Powden from the education committee. The group would meet in the "clubhouse," an upper floor of the Joint Fiscal Building to model the numbers, write brochures, develop media strategies, and otherwise build public pressure for passage in the Senate.

In speaking of civil society organizations, the term is not generally applied to legislators. Nevertheless, this group of like-minded legislators blended the lines. They were committed, elected with a reform purpose in mind, carried their campaign without support from the executive branch, countered the traditional positions of the legislature, and were challenged by well-heeled and effective lobbyists.

The plan was politically impossible with a Republican Senate and an irate teachers' union. The plan, House Bill 541, passed the House 83 - 62 and a version, with few similarities, passed the Senate. The Senate proposed a supervisory union-based regional tax sharing program but when the conference committee suddenly accepted the Senate position, it failed ratification by the House. When the day was done, the Senate would not accept the House plan nor vice versa. The House reform plan fell to a strange coalition of local autonomy protectors, a Republican controlled Senate, palace intrigue within the Democratic party and the influence of the teachers union. Wright was targeted in the next election and, while campaigning for fellow Democrats, neglected his own race and lost his seat in 1994.

Nevertheless, the Democrats retained a House majority and came back in 1995. The House Ways and Means Committee was chaired by staunch reform

advocate Oreste Valsangiacomo. Doing the heavy-lifting was reform advocate and committee vice-chair John Freidin and Paul Cillo who was elected House Majority Leader in the fall of 1994.

Not being able to pass a bolder plan with a statewide property tax, the 1995 plan (H-351) was designed to win approval from a Republican Senate and a reluctant Governor. There was no income tax change or statewide property tax. The plan did have equity features in the equalized yield formula albeit under-funded. The House passed the bill in March, 1995 but the Senate did not send it back to the House until the end of the 1996 session.

In the meantime, Lieutenant Governor Barbara Snelling, wife of the deceased former Governor, established her 1995 Republican summer study group that basically said the problem was not one of inequities but that education spending was too high. This line of thought was advanced by education Commissioner Richard Mills' "Cost and Quality" report of November 1995 that said education spending was wasteful. They proposed cutting \$100 million by increasing class sizes.

Even the Republican controlled Senate rejected the Republican study group's proposal. Their 1996 response to the scaled-back House plan was a county-based property tax with a property tax exemption for homesteads. After considerable acrimony between Republican Senator Sara Gear and Democratic Representative John Freidin, the conference committee dissolved without agreement.

**The End of Deliberative Discourse and Political Regrouping - While**  
legislative sparks flew, public discussions and debates were generally polite, intellectual and could be characterized as consciousness-raising. The combined effect of lowered state school support, local tax increases and a weak economy lent credence and intensity to the awareness campaigns staged by the reformers. Public support for reform was increasing.

Having seen their efforts repeatedly succeed in the House but be killed in the Senate, reformers realized that awareness campaigns would not be sufficient. They had to become directly focused on the politics and, particularly, on key races in the Senate. They went out to get a reform-minded majority. The 1996 elections saw them establish a 17-13 majority in the Senate and the election of a reform-minded Lieutenant Governor, Douglas Racine.

Recapturing the Senate was not the only path reformers chose. Many felt the legislative process was too uncertain, unlikely to be productive and they needed to take the substantial risk of court action. They knew if they failed, that reform could be set back for decades -- if not forever.<sup>13</sup>

## V. AMANDA BRIGHAM AND THE COURT CASE

Amanda Brigham was a second grade student in the small dairy town of Whiting, Vermont. She was soon to find her place in Vermont history.

Amanda's mother, Carol Brigham, was a school board member in Whiting as her father, Leo Derepentina, was before her. The town of Whiting has limited property wealth and has always had a difficult time funding their school. Standing in the playground, you can easily see the Killington ski resort which spent 25% more per pupil at a tax rate one-fourth of that in Whiting.<sup>14</sup> In 1994, Carol Brigham was approached by school superintendent Mathis to see if she and her family would lend their support to the court case.

The Vermont chapter of the American Civil Liberties Union had grasped the issue and Robert Gensburg was the lead attorney. The reformers and Gensburg rapidly found each other. Gensburg was to donate countless hours to the cause. He not only immersed himself in all of the legal angles, he developed an expertise in statistical analyses necessary to advance the case. The lead plaintiff was Amanda Brigham followed by Spencer Howard, a Hardwick student. Steadfast reformer Allen Gilbert lined-up his school board in Worcester as a

plaintiff while Mathis enlisted the Brandon board. Aggrieved taxpayers rounded out the plaintiff list. Seeking what was considered to be a sympathetic judge, the case was filed in March, 1995 in Lamoille County Superior Court.

Educational organizations were reluctant to take-on such a drastic and politically volatile case. Many were afraid that a court defeat would do permanent damage to their cause. They felt that the education clause, which said that each town ought to maintain a sufficient number of schools for encouraging virtue and preventing vice, might prove too weak to serve as a constitutional base for reform<sup>15</sup>. They did, however, feel more comfortable with the equal protection articles of the Constitution. As regards taxation, article seven states that government exists for "the common benefit" and not for the particular advantage of any group of people "who are a part only of that community." Article nine, says that each member of society is ". . . bound to contribute his proportion toward the expence(s)... , for the common good.<sup>16</sup> Based on a legal article written by the VSBA's executive director, John Nelson, and the urging of Gilbert, the school boards set up a fund to pay for expenses of the case. Bob Gensburg and other attorneys worked for free.

The state was the defendant, but the plaintiffs had the advantage of the official state reports (particularly the school finance, "Scorecards") that demonstrated the magnitude of the inequities. This was compelling evidence that the state did not attempt to refute. The state argued there was no Constitutional guarantee for equal educational opportunities and thus, no remedy should be found at law.

At the trial level, Lamoille County Superior Court Judge Meaker, in a 2 October 1996 partial summary judgement, said that the education article provided no entitlement to equal education, but there was an entitlement for equitable taxes. This ruling satisfied neither the plaintiffs nor the defendants. Consequently, both parties jointly appealed to Judge Meaker to let the case proceed to the supreme court on the entitlement questions. Literally on the eve of

the trial, the trial judge granted the motions for summary judgement. The case moved to the supreme court for a decision on whether there was a constitutional guarantee that all children be properly educated. If such a requirement existed, then it was anticipated that the case would be remanded back to the lower court for trial. Of course, for the plaintiffs, a finding of a constitutional guarantee was tantamount to winning.

The supreme court heard the case on 18 December 1996, with Amanda Brigham, the plaintiffs and other reform advocates sitting behind the attorneys. In the questioning by the Justices, the state contended that a little inequity was permissible which provoked an interesting exchange as to how little was little.<sup>17</sup> In an unanimous and eloquent decision issued on 5 February 1997, the court found a state obligation for educational equity and declared the system unconstitutional.

Thus, without a trial, and moving with exceptional speed (four months from procedural appeal to decision), the Court ordered the legislature to remedy the disparities. "In this appeal, we decide that the current system for funding public education in Vermont, with its substantial dependence on local property taxes and resultant wide disparities in revenues available to local districts, deprives children of an equal opportunity in violation of the Vermont constitution."

## **VI. PUTTING THE PIECES TOGETHER: THE DEVELOPMENT OF ACT 60**

As the legislature opened in January 1997, a property tax relief proposal was being developed which was generally considered weak and inadequate but would be passed by the Senate and signed by the Governor. Basically, school taxes would be capped at three percent of income for incomes below \$80,000. Reform legislators did not have high expectations.

The 5 February 1997 court decision hit the general assembly like a thunder-bolt. The reformers were euphoric, and the opponents were stunned in

disbelief and dejection. Newspaper columnists described it as a watershed event in the state's history.

All the old analyses, studies, print-outs, and failed reforms of the previous seven years' work were put into the hands of the House Ways and Means Committee still warm from the copying machine. Legislative leadership defined and divided the areas that had to be addressed and assigned them to various House and Senate committees. The prevailing lawyers, analysts, reform advocates, and school officials fanned out to the various money and education committees to provide consultation and advice.

As analyses of every sensible solution (and many non-sensible proposals) had already been accomplished, models had been tweaked and adjusted to maximum effectiveness. Due to the massive homework and expertise, one of the largest and most complex pieces of legislation in the state's history moved through both houses in a matter of four months. A large array of "soft landing" provisions were added to protect the gold towns who now faced rapid increases in tax rates in order to bring them up to the common statewide tax rate.

The proposal had a number of interesting features:

- A **statewide property tax rate** was set at about \$1.10 for each hundred dollars of property wealth (after full implementation).
- A **block grant** would be provided for each student of about \$5000.
- Local districts could vote any amount they wanted to spend above the block grant level. For spending above the block grant amount, all towns would be **guaranteed a set tax yield** for similar levels of taxation. For example, for every additional penny on the local property tax, the town would receive \$42 per pupil in revenue.
- Districts that had more than sufficient tax ratables to maintain their spending level would have excess funds **recaptured** by the state education fund for use by other districts. This was to prove the most controversial feature.
- **Educational quality standards** were adopted across the state.

- **Tax burden on a person's homestead was capped at no more than 2% of household income, up to an income of \$75,000, to support the block grant.**

It was a warm and sunny day on 26 June 1997 when Governor Dean traveled to the three room Whiting School to sign the law into effect with Amanda Brigham and Whiting students by his side. It was also a congregation of the key legislators, citizen advocates, plaintiffs, and historical reformers who now saw the realization of years of work.

Taxpayer and educational equity was now the law of the land.

## **VII. THE FURIOUS BACKLASH: CIVIL ORGANIZATIONS OPPOSED TO REFORM**

One group's victory is another's defeat.

On the same day as the signing, reform opponents from the town of Stowe marched into the Lamoille county courthouse, accompanied by their children, to file suit against the new law. They contended that it was unconstitutional and, among other things, violated the "Declaration of Independence." This was a ridiculous legal argument, but it made strong political theater.

The real conflict now emerged. Reform had moved from a theoretical good, to which everyone subscribed, to a reality. Reform opponents had various constituencies and motivations:

- **Opposition to tax increases** - Towns and individuals who had been favored with large revenues from low taxes now found that they were facing considerable tax increases.
- **Effects on resort proprietors** - As the wealth of the state is disproportionately concentrated in a small number of ski-oriented towns, these areas were outraged.<sup>18</sup> Despite the elimination of business property taxes (machinery and equipment taxes), and numerous soft-landing phase-in

procedures, small businesses in small towns argued an unfair increase in their taxes.

- **The Republican party** - Although the bill had bipartisan support, many Republicans saw Act 60 as a defeat and as a future opportunity. Although caution was urged by some party officials, Act 60 was to become the obsession of the 1998 elections. Influenced by forces across the nation and within the state, the Republican party abandoned the center to Governor Dean and conservative Democrats. They moved sharply to the right, and Act 60 was the major campaign issue.
- **Town Clerks and Libertarians** also attacked the new law as they perceived it as a take-over of their historical responsibilities and liberties. "Local Control" was their battle cry. They called the law communistic, socialist, and any other handy epithet that could be reached and hurled. Gubernatorial candidate Ruth Dwyer called for outright rebellion, civil disobedience, and for citizens not to pay the "onerous" taxes.
- **Wealthy Influentials** - Numerous executives of major news organizations such as the New York Times, the Wall Street Journal and Time magazine have vacation homes in Vermont. Typically, they enjoy expensive homes with low taxes in the gold towns. It was not long until reporters from these media trooped to Vermont and filed stories about the reform. The Wall Street Journal repeatedly ran negative stories and the New York Times was also negative. Time magazine was balanced which may have reflected the building reaction against out-of-state criticism.

This collection of wealth, passionate commitment, media access, political energy, business and economic interests, local government officials and influential citizens represented a formidable armada sailing into battle at maximum speed. Many espoused a take-no-prisoners intensity. They did not shrink from inflammatory talk, appeals to fear, malleability with the facts and vicious personal attacks.

#### **Anti-Reform Organizations** - With motivation and backed by large and

self-evident economic interests, two reform opposition civil organizations were quickly formed.

The **Vermont Parents for Quality Education** was spear-headed by Mary Barrosse, a parent from the property rich town of Dorset who feared that her children's school budget would be cut because of the higher and recaptured taxes townsfolk would have to pay to the state. The **Coalition of Municipalities** was headed by Jay Barrett who was to unsuccessfully run for the House. His organizational focus was local control. These groups found themselves politically aligned with school choice, libertarian, and conservative groups.

They quickly developed strong organizations with executive directors, websites, newsletters, and targeted and differentiated fund raising activities. They inserted "newsletters" in the newspapers of the state, bought full-page ads, supported two gubernatorial candidates who opposed Act 60 (reduced to one after the primary election), mounted a strong supreme court impeachment movement, paid for radio and television ads, enlisted academics to critique the existing plans and to develop alternative tax plans,<sup>19</sup> coordinated and encouraged anti-Act 60 op-ed pieces and letters to the editor, staged and/or packed public debates, flooded call-in shows, and effectively organized statehouse demonstrations. One of the more notable and dramatic efforts was a "candlelight protest" for the Governor when he hosted the National Governors' Association meeting.<sup>20</sup>

The funding, organization, and comprehensiveness of opposition groups was massive. They far outstripped reform proponent efforts in getting the reforms enacted. Nevertheless, opposing groups used the same civic and organizing political techniques as the reform proponents.

**The Normative Base of Civil Society Organizations - Civil society** organizations implicitly posit a normative base which includes better government, civic efficacy, and transparency. Broader governmental participation, equality,

and advocacy for poor, excluded and vulnerable groups are part of the base. They are to encourage the rule of law.<sup>21</sup>

From the perspective of reform proponents, the civil organizations formed to oppose Act 60 were aimed at perpetuating inequities, denying equality to people of moderate and limited means, advocating against the rule of law, and were generally opposing the good of the whole.

Reform opponents, however, shrilly defended the rightness of their cause. Mary Barrosse in her Christmas 1997, editorial piece spoke of peace, and healing the, "deep wounds and divisiveness" caused by Act 60.<sup>22</sup> Even the name of Barrosse's organization, "Vermont Parents for Quality Education," appeals to a normative high ground. Repeatedly, opponents decried the "unfairness" of a system which would cause the tax rates of the most affluent 11% to be equalized to those of the remaining 89% of the state.

Reform opponents talked of noble purposes and undoubtedly believed in what they said. Nevertheless, if opponent perspectives were successfully enacted, informed independent observers agreed that they would have the opposite effect from what was rhetorically espoused.<sup>23</sup> There was an obvious and huge normative difference between reformers and opponents and the gap was never closed.

#### **VIII. WHEN'S THE CAVALRY COMING? THE ORGANIZATION OF "CONCERNED VERMONTERS FOR EQUAL EDUCATIONAL OPPORTUNITY"(CVEEO)**

While the opponents were staging high-profile political and media events, the legislature had gone home. During the summer, the small band of property tax reformers attempted to respond to letters to the editor, participate in public forums, write countering op-ed pieces, engage in e-mail list-serve debates and otherwise keep the reason for reform (which was rapidly getting lost in the

rhetoric) in the forefront of citizens' minds. They were clearly on the defensive and considerably out-gunned.

As opposition mounted during the summer and fall of 1997, the proponents were feeling distinctly alone. They forlornly scanned the horizon to see when the cavalry was coming. The Governor made few pronouncements in support of the bill while frequently meeting with reform opponents.

Lieutenant Governor Doug Racine, Senator Cheryl Rivers, Representative Karen Lafayette and William Mathis met at a picnic table at the Vermont Technical College in Randolph on 19 September 1997 to organize the cavalry. At this point, Racine (assisted by reform advocate Cindy Metcalf) took the lead to draw together reform proponents from legislators, citizen advocates, plaintiffs, and business people. This group began meeting informally in Fall 1997 and was formally organized and registered as a non-profit corporation in February 1998.

Former Governor Philip Hoff, a long-time proponent of tax and education finance reform, was selected as chair of the group. Hoff was a zealous, forceful, and highly-respected proponent. Allen Gilbert, a school board member from Worcester was selected as the Executive Director. Gilbert, an early VOTE leader, was also a plaintiff in the Brigham case and was to emerge as the key spokesman and coordinator for the formally organized civic organization.

The group publicly announced their organization at a statehouse press conference on 13 February 1998 with Philip Hoff, Douglas Racine and Allen Gilbert as the main speakers. Gilbert had already established a clipping service to monitor the activities across the state. The purpose was to immediately react to specious claims with letters and articles solicited from a small stable of writers. A web page was established by Tom Gray to support the plan. Gilbert emerged as a debater, opinion writer, co-author of an explanatory book, and interviewee with national and state press.

### **A Loss for Deliberative Discourse: The Battle of the List-Serve -**

Enamored of new technology, Robert McNamara of the Vermont state department of education suggested to Commissioner Marc Hull that an e-mail list-serve be established so that an "electronic democracy" could discuss and debate features of the new law. Once established in July 1997, the hundreds of people who signed on to the list-serve had their computers barraged by between twenty and fifty e-mails a day. Opponents used the vehicle to find each other and to organize demonstrations, and activities, and establish a statewide communications network. Proponents also used the list-serve to find and support each other. The intensity and shrillness increased. Civility was soon forgotten and personal attacks against people of different views began. Others used the medium to push for school choice, bemoan the school-to-work conspiracy involving Hillary Clinton and George Bush (!), advocate for particular reading methods and otherwise push individual agendas.<sup>24</sup> Reform proponents would find their messages flamed by personal attacks and, one-by-one, they dropped out.

By November 1997, proponents of Act 60 still remaining on the list-serve were George Cross, Cheryl Rivers, William Mathis, Connie Krosney, and Martha Heath. Opponents to Act 60 vastly out-numbered proponents and were lead by Mary Barrosse, Nancy Hall, Peter Gratiot and opponent webmaster, Jeffrey Pascoe. These were many of the same people engaged in the newspaper and public debates.

The original purpose of an exchange of ideas, civil dialogue, edification about the law, and the gradual improvement of the educational and finance systems was lost in a cacophony of polarized political debate. This author and others urged Commissioner Hull to decommission the list-serve as it had become a distinctly uncivil civic discourse. Simultaneously, editors and many Republican leaders were calling for a cooling of the rhetoric. Hull closed the list-serve in December 1997 to the angry cries and demonstrations of the reform opponents.

The list-serve was re-established through the efforts of Republican state Senator Peter Brownell but, with the exception of contributions by George Cross and Rod McCormick, the medium became a dedicated communications vehicle for reform opponents.

**Public Information Campaigns** - To explain the new law, various legislators, government officials and proponents took to the road in fall 1997. Senators Cheryl Rivers and Peter Shumlin were at the forefront along with Tax Commissioner Ed Haase and new tax deputy, former legislator Sean Campbell. Education Commissioner Hull also took the podium along with school superintendent Mathis.

Opposition was strongest in the southern part of the state, and Hull was subjected to an incredible level of personal attacks which resulted in strong coverage in the media. The center of northern criticism was in the town of Stowe. However, active northern opposition did not run as deeply as it did in the southern cordillera.

The department of education, the VSA and the VSBA co-authored a manual explaining the new act. Vermont Press Bureau reporter Jack Hoffman wrote a widely distributed booklet. While both of these publications were neutral, reform opponents characterized the documents (which spelled out the methods of individual tax relief and tax reform) as biased.

**Town Meeting 1998** - The outcome of the furious uproar in the last half of 1997 faced its first test in the town meeting votes of March 1998. In the annual school budget votes, held on the first Tuesday of March, opponents sought to defeat school budgets as a symbolic protest measure. Of the approximately 300 town and regional school district votes, only ten were defeated even though budgets went up an average of six per cent.<sup>25</sup> This was a far better passage-rate than usual. (In an average year, 27 budgets are defeated.) Clearly, opposition to Act 60 was not filtering down to school budget rejection at the local level.

The reasons were somewhat clear. First, 89% of the polity were eligible for a personal property tax reduction averaging \$516 each. They saw immediate personal gains from the act. Second, the tax rate also declined in 168 of the 251 towns. Stowe, a hotbed of opposition, passed their budget by a 2-1 margin.<sup>26</sup> This was a battle opponents were not to win.

**November 1998 Elections** - Fall 1997 to November 1998 was the year of perpetual thunder. The citizenry was subjected to an incessant storm of newspaper articles, demonstrations, press releases, letters to the editor, opinion pieces, and paid media advertisements. It was not a time for the timid. Opposition efforts were at a peak. Although considerably out-spent, CVEEO proponents rose to the challenge.

While town meeting was a success for the proponents, everyone knew that the real test was the November, 1998 election. The Governor, Lieutenant Governor, and all 180 House and Senate seats were up for grabs. Opponents knew they had to prevail in the legislature. They faced the daunting task of upsetting a popular (but lukewarm reform supporter) Governor who had not previously faced a serious challenge. Republicans needed to gain majorities in both the House and the Senate.

Lieutenant Governor Doug Racine, an active organizer and member of the pro-Act 60 reform group, was seen as a key person to defeat. A turn-over of only two seats in the Senate plus the Lieutenant Governor would give them control of the chamber. Opponents also targeted reform architects, House members John Freidin and Paul Cillo. Freidin and Cillo fell to highly orchestrated and heavily funded challenges. Doug Racine held on to his position by a margin of less than one per cent against well-known challenger and former Lieutenant Governor Barbara Snelling.

In the Republican primary for the Governor's race, a ski business mogul and steadfast opponent of Act 60, Bernard Rome, was defeated by the further

right and fire-breathing opponent of Act 60, Representative Ruth Dwyer. Dwyer injected venom atypical of Vermont state politics, but Dean was re-elected by a 58-42 margin. Dean held the business sector, the center and left.

Well-organized reform opponents, with strong financial backing, had taken their best shot and failed. As Republican state senator and government professor Bill Doyle said, most observers felt it had been a Democratic year.<sup>27</sup> The House remained Democratic but by a smaller majority. The Senate remained 17-13 in favor of the Democrats. Selected appointments to key committees assured that Act 60 would be safe at least until the next election.

While other challenges continued, the tide had turned. Reform advocates had won their most important battle -- retaining favorable majorities in the legislative bodies and in the Executive Offices.

**The Tax Rebellion** - In 1997, reform opponents circulated a petition to the 28 towns in Jay Barrett's Coalition of Municipalities to see if they would join the rebellion by refusing to send statewide property tax and recapture monies to the state. There was limited appetite for civil disobedience despite exhortations by gubernatorial candidate Ruth Dwyer. Three towns (Dover, Searsburg and Whitingham) ended up withholding tax payments to the state. The state sued the districts to pay the taxes due the state and withheld all payments to the defiant towns. The towns took their issue to the federal courts and were rebuffed by federal district court judge Garvan Murtha on 28 April 1999.

**The Court Challenges** - Of the thicket of court cases filed, to date, reform proponents have prevailed in both state and federal courts. By 1 May 1999, three cases had been rebuffed by the Supreme Court; the central case being whether the recapture provision of the law was unconstitutional.<sup>28</sup> By September 1999, only one court-case remained and this had been rejected by the lower court. Except for winning on one technical definition in a transition provision of the act, opponents lost every court challenge. The Stowe Reporter, situated in an anti-

reform stronghold, notes that even the staunchest of opponents have softened their stance.<sup>29</sup>

**The Legislative Challenges** - One alternate plan, Educational Revenue Sharing, would return the state to a town-based percentage equalizing system. With the narrow tax base of individual towns, this system would minimally support the poor towns and leave the richer towns in their pre-Act 60 privileged position. This proposal failed to gain legislative traction due to (1) a committee structure that would not vote-out such a proposal, (2) a return to a perceived unconstitutional system, and (3) a failure for the numbers to add-up.

A second proposal would have enacted a value-added tax to each step of the manufacturing process. This proposal was quickly scuttled when independent economists noted the extreme and negative effects on Vermont businesses.

The reform opponents recognize that they have yet to develop and build sufficient support around a viable alternative.

**Challenging the Composition of the Supreme Court** - Headed by former state senator and one-man Libertarian think-tank John McClaughry, a major effort was mounted to deny the retention of three Supreme Court justices who ruled in the Brigham case. However, in the spring 1999 session, by secret ballot of the House and Senate meeting as a general assembly, the justices were retained.

## **IX. CIVIL SOCIETY AND ACT 60**

Vermont has several factors that make it fertile ground for civil society organizations such as the openness of government, the rich ratio of representation, and the common values of residents. The following points serve as foci for expanding civil society and also reflect the evolving changes of civil society in an electronic world.

**Government Accessibility** - Vermont is a state ripe for the development of civil society organizations. They are extremely effective in a state where everyone calls the governor by his first name. The state has a small scale bureaucracy and eschews excessive formalism and pomp in government. As compared with others, the political process is open and accessible. The geographic boundaries are small and the elected representatives are many. Despite numerous and intense political disagreements, there is still a strongly held Vermont identity among all peoples. Town level government is robust and state elected and appointed officials are friends and neighbors.

State civic organization movements have resulted in some of the strongest environmental, health and development laws in the nation.

**Blending of CSOs and Government** - This informal structure has led to a blending of lines between citizen advocates, local officials, elected officials and state bureaucrats. In the instant case, it could be argued that the CSOs not only changed peoples' minds, they became a part of the political process and mustered sufficient legislative votes to obtain enactment. Information and support flowed freely across organizational and hierarchical lines. Likewise, in a small state with strong public access laws, sharing of information, data bases and analyses (with some exceptions) flowed back-and-forth easily between government agencies and across contending groups.

**The Small Number of Actors** - One of the most astounding features of the successful reform was that it was engineered by such a small number of people. Core actors included a half-dozen legislators and a like number of citizens. In many regards, it represented the small pressures that tipped evenly balanced, but much heavier, opposing forces. The success of the reform is an antidote for those who feel that small and individual actions cannot be successful.

**The Slender Finances of the CSOs and the Financial Imbalance** - The

war-chest for the proponents was incredibly meager. Contributions were typically in the \$50 and \$100 range with total fund-raising probably not exceeding \$20,000.

Opponents raised hundreds of thousands of dollars when the effects of the Freeman Foundation were included. If the grants provided by this foundation to avoid recaptured tax sharing (and thus, financially topple the reforms) were added, then the figure is in excess of \$6 million. Despite television spots, full-page newspaper ads, mass mailings and the dedication of partisans, opponents did not win the day. They argued that they were forced to raise money as the full resources of state government were arrayed against them. State commissioners responded by stating that they were neutrally required to implement the law of the land and inform the citizenry.

**The CSO as a Defensive Player** - The initial development of the reform effort was more casual and represented small groups of kindred spirits who sought to enhance public awareness. In the early stages, deliberative dialogue was the mode. Formal organization and a new level of political activism was only undertaken when the enacted reforms were severely threatened through the formation and actions of anti-reform groups.

**Composition and Skills of the CSO** - The ever-floating membership of the CVEEO represented a diverse array of skills, knowledges and abilities. Highly expert tax analysts, finance specialists and attorneys were represented. Often, they had to develop new skills and new analyses in short order. Committed and talented speakers and writers were also available. There were also adroit political actors and people with the knack to write the right letter or make the compelling media story. They were able to call on a broad spectrum of specialists as needs arose.

Opposition groups had a like diversity of talent, employed the same techniques and effectively brought their forces into play.

**Organizational Development** - In beginning stages, reform organizations were weak, diffused across the state and fluid. Early actors left the stage to be replaced by others. Some lost elections and others simply lost interest. The highest focus and strength of the group was found at the point of greatest danger to the reform movement. As the threat receded, the organization became less active. As with most volunteer organizations, the level of commitment varied. There was a spectrum of activity ranging from zealous hard-core to the passive but like-minded.

**Normative Base of CSOs** - In the eyes of reform proponents, they were fighting for a holy cause. Likewise, opponents sincerely believed their cause was just. It is in examination of the social outcomes that the differences are found.

One of the reasons that reformers prevailed, is that the citizenry recognized that the opponents put forth self-serving and inequitable solutions. That is, there is a historical and deep acceptance of equity principles.<sup>30</sup> At the height of opposition, public polls showed the people to be evenly split. By summer 1999, the balance moved in favor of Act 60. Much of the acceptance of equity as a principle can be traced to the countless community forums of the pre-reform CSOs.

**The battleground was the media** - Effectively presenting the case in the media was essential. Opponents staged very strong political media events (letters to newspapers, children demonstrations, picketing the National Governors' Association, etc) and some that back-fired (bashing Senator Rivers' car and calls for civil disobedience). Out of state media portrayed the state as being on the verge of civil war.<sup>31</sup> For all the turmoil, in-state media and the citizenry did not embrace such an Armageddon-like view. The major state newspapers editorially supported Act 60. At most, statewide media would urge softer landings for heavily impacted gold towns. While embracing negative out-of-

state media coverage, opponents later blamed in-state media for unfair coverage.

For all parties, the relationship with the media could be characterized as symbiotic, love-hate and mutually exploitive.

**The Electronic Civil Community** - New electronic media emerged and changed the nature, content and style of civic discourse. This new form is still evolving.

- The controversial list-serve (noted above) served as a rallying point for reform opponents as well as proponents. Opponents were able to more effectively use the medium and, it could be argued, chased reform proponents from that field.
- As a rapid means of communicating with like-minded people, electronic media (e-mail) showed vast effectiveness and potential. The civility of the electronic discourse was generally viewed by people of different persuasions as being rude, vulgar, and wrongly personalized. The "moderator" function of town meetings was absent. Mores of social behavior were not evident. Inaccurate information and rumors flourished.
- National and state web sites sympathetic to the libertarian and conservative bases of reform opponents were far more numerous and sophisticated than those of proponents. (For an illustration, compare the pro and anti - Act 60 web sites.) Reformers were not as organized or focused in this venue.
- Blurring of fact and fiction was increased by electronic media. There is no editing in cyber-space nor impartial review by referees. Vested interest groups post "research" favorable to their point of view without attempts at fair and equal treatment.
- The "pseudo-study" emerged; that is, so-called research and analyses that had the appearance of research in organization, foot-notes, charts, tables, statistical appendices and purported scientific methodology. This information was transported into the political fray, the statehouse, and newspaper articles with the preface, "The research shows . . ." This distortion of knowledge for

political purposes was not the sole province of reform opponents. The abuse of research outcomes and methodology in a political context was a major topic of concern at the spring 1999 American Educational Research Association meeting and must be a major concern for civil society.

#### **Civil Society Vignettes from Both Perspectives -**

- The proponents structured the reforms so that the vast majority of citizens (89%) were financial "winners." This was an intentional strategy to ensure broad support and to maintain the integrity of the reforms. As a result, opponents had to sell a plan that was not in the financial interests of the voters. This was an extremely savvy move by proponents.
- Opponents had to appeal to some moral foundation. Despite considerable success with the national media, citizens resented the outside influences. Sympathy for the privileged position of the rich was limited. Fundamentally, they did not persuade the citizens.
- The opponents also had to structure an alternative plan that was acceptable, would achieve basic equity principles, and meet court requirements. Thus, they were "against" the current plan but could not articulate what they were for.
- Political divisions within the opponent camp discredited their efforts. The moderate opponents and the extremist opponents fought for political hegemony. When the extreme gubernatorial candidate won the primary, opposition was politically marginalized and they lost the election. Internally competing groups ended up with neither winning.

**Government performance improved as a result -** Before the reforms, it was virtually impossible to determine the amount being spent on education or the amount raised from various tax sources. Better record-keeping, and charts of accounts were established. Fundamental organizational and analytic capabilities improved immensely. Both the joint fiscal office and the state department of education capabilities became quick, facile and accurate. This capability was an asset to people from all perspectives.

Most importantly, and often forgotten in the political wars, poor schools now had the financial capability to offer a high quality educational program on the same terms and conditions as more affluent schools.

## X. THE LIMITATIONS OF CIVIL SOCIETY

On the second anniversary of the Brigham decision, proponents held a birthday party to honor fallen Generals Freidin and Cillo. Perhaps reflecting modesty, they said they were humbled and honored to have the opportunity to be in the right place at the right time. Tax and educational reform had been on the agenda for over half a century, and the latest battle was seven years long. In previous efforts, the legislature, the executive, public will, the economy or political circumstances denied reform.

None of the earlier efforts, however, had the power and the prod of a recent supreme court decision. Albeit, the court case was brought by the same advocates working in a different venue. People were also aware that courts reflect the times and the government that appointed them. A different court at a different time may have reached a different decision.

Likewise, a favorable legislative structure came together at the time of the court decision. Certainly, the advocates played a role in electing favorably inclined candidates -- particularly in the Senate. Yet, there are many factors that influence elections.

Coming off of a recession, the pain of the inequities provided political impetus and the rising economy assured the revenues necessary to fund the reforms.

Civic organizations had tried and failed before. This time, all three branches of government were aligned. A growing economy, at precisely the right time for reform, brought a citizenry smarting from inequities together with a boom

that would help relieve financial pressures for reform. Reform organizations had cut their teeth in earlier failed ventures and slowly amassed public awareness and support. Well-organized opponents contributed by politically marginalizing themselves. Opponents also did not advance nor rally behind a coherent alternative. These were ideal circumstances for reform.

Did the reform happen by a fortuitous set of circumstances? Were circumstances engineered so all pieces would converge at the right time? Years of incremental development and work laid the foundations with the people, the legislature, and the courts. Technical capabilities to design and implement reform had been honed. When the opportunity was presented, quick, organized and effective work brought success.

## XI. CONCLUSIONS

The reform process resulted in watershed transformations of political thought and culture in Vermont. The rules were changed. First, the notion of a statewide responsibility for the education of all children was firmly established. It was no longer acceptable to hide huge and glaring inequities in the rhetoric of local control. Secondly, the notion of a statewide property tax, debated for 67 years, became a feature of the political landscape. Third, the notion of a very low state financial share in education was eradicated. It changed the way government was viewed and the state's responsibility for children.

Yet, solutions do not last forever. Over the past half-century, seven different cycles of educational finance reform swept across the state. State finance formulas have finite life spans. Political trends are finite as well. Ultimately, reforms are only as strong as the public will to sustain them.

Part of the long-term stability will depend on the ability of state policy makers to adjust and refine the system. Initial and generally healthy steps were quickly taken in the 1998 and 1999 legislative sessions to fix problems and to smooth bumps. Issues such as the financial effects on small schools, the

threshold of the income cap for tax burdens, properly funded special and technical education, and other such issues will determine long-term stability. State finance experts are now taking the longer view as to how to sustain the reforms when the economy takes an inevitable dip.

The national politics of state finance reform are reflected in Vermont. Like the nation, equity and progressive taxation are in conflict with low taxation and conservative interests. Since 1971, 40 states have taken educational funding and taxation inequities to their highest court. After experiencing success in the early 1970s, the momentum for court remedies sputtered. By the late 1980s, the trend was against the plaintiffs. A revival of cases occurred in the 1990s based on educational entitlements in state constitutions. With plaintiffs winning 15 of 22 cases from 1989 to 1998, the Brigham decision is a contributor to this new trend.<sup>32</sup> The new "third wave" of litigation is based on the premise that all children are entitled to a good education. Jeffersonian and enlightenment ideals have been prominent in the Vermont debate and are now reflected in the successful contemporary court cases. Until recently, finance cases have been focused on a "minimalist" approach as reflected in 36 states having foundation programs. Adequacy has now become a concern and may push historically low foundation amounts to new levels. The use of a guaranteed yield formula may signal a shift toward more equitable types of funding solutions.

For civil society organizations, Act 60 is encouraging. A small number of groups and people were successful in achieving fundamental reform while opposed by strong and well-funded partisans. A long slow rhythm stretching over fifty years fed into a cycle of seven years which led to an eight-month cycle of final court cases and completion of the reform law. The pace of reform accelerated. When completed, the reforms weathered an all-out political assault. In an era that places little value or trust in government, government succeeded in a large and complex major equity reform. While income inequality continues to increase, the concept of an income sensitive property tax runs against these tides. Despite calls for market forces, individual choice and dissolution of the

public school "monopoly," in a state where decentralized government is legendary, the people still embraced and reaffirmed the common good.

## ENDNOTES

- <sup>1</sup> While every effort is made to insure impartiality, the author was a member of several of the civil society organizations, a plaintiff in the court case, and participated in the implementation of the law.
- <sup>2</sup> Burlington Free-Press, 12 June 1998. John Irving response dated 1 July 1998.
- <sup>3</sup> Scorecard for School Finance, FY95. March 1996. State Department of Education, Montpelier.
- <sup>4</sup> Washington, DC, 1996 report.
- <sup>5</sup> Bernstein, Jared, Edie Rasell, John Schmitt and Robert Scott. "Tax Cut no cure for middle class economic woes." Briefing paper of the Economic Policy Institute, Washington, D. C., 1999.
- <sup>6</sup> "Vermont Tax Statistics, Summary of 1990." Department of Taxes, Montpelier, VT, 1990.
- "1995 Vermont Homestead Property Tax Statistics." Vermont Department of Taxes, Montpelier, VT.
- "1997 Vermont Homestead Property Tax Statistics." Vermont Department of Taxes, Montpelier, VT .
- <sup>7</sup> Scorecard for School Finance, FY95. March 1996. State Department of Education, Montpelier.
- <sup>8</sup> Remark attributed to Governor George Aiken.
- <sup>9</sup> Vermont Atlas and Gazetteer, DeLorme Mapping Company, Freeport, ME, 1988.
- <sup>10</sup> "Property Tax Reform: Your School Taxes are Too High, We're Just One Vote Away From Changing It." 25 February 1994.
- <sup>11</sup> Telephone Interview with Allen Gilbert, 10 May 1999.
- <sup>12</sup> Joint Fiscal Office, 1997.

- <sup>13</sup> The review of "Failed Reform Efforts" is based on: telephone interview with John Freidin, 10 May 1999; e-mail from Paul Cillo, 23 October 1999 and 26 November 1999; e-mail from Deborah Brighton, 1 November 1999; and Vermont Superintendents' Association "Legislative Updates", 1994 - 1997, Montpelier, VT.
- <sup>14</sup> Rebell, Michael A. "Fiscal Equity Litigation and the Democratic Imperative." *Journal of Educational Finance*. Volume 24, No 1, summer, 1998, pp. 23-50.
- <sup>15</sup> Vermont Constitution, 9 July 1793, Article 68.
- <sup>16</sup> Vermont Constitution, 9 July 1793.
- <sup>17</sup> An interesting analysis of the cogent points in the oral arguments is found in Associated Press's Christopher Graff's analyses, 21 December 1996.
- <sup>18</sup> See, for example, "Is Act 60's Shark-Pool Sustainable?" VSAA Reports. Newsletter of the Vermont Ski Areas Association, Spring 1999.
- <sup>19</sup> See, for example, William Fischel's work on property Tax Revolts published by the Lincoln Institute and Peter Gratiot's finance plan <<http://act60.org>>
- <sup>20</sup> Jimerson, Lorna. "Policy-Politics Convergence: Year One of Vermont's Act 60." AERA, 20 April 1999.
- <sup>21</sup> Manor, James. "Civil Society and Governance: A Concept Paper." 26 August 1998.
- <sup>22</sup> Barrosse, Mary. "Season of Hope." Op-ed ran in many papers in the state. December 1997.
- <sup>23</sup> E-mail from Allen Gilbert to the author, dated 5 September 1999.
- <sup>24</sup> For example, see Professor Lawrence Picus' remarks at the Fall 1998 Vermont School Boards' Association meeting, Burlington, Vermont.
- <sup>25</sup> The archives of the list-serve may be found at <<http://list.uvm.edu/archives/vtforum.html>>
- <sup>26</sup> Joint Fiscal Office printout, 2 October 1998, (summer98/act60/9899COMP.WK4by jfo/cmb)
- <sup>27</sup> Bill Doyle, Rutland Herald op-ed, "1998 Fateful Year for Act 60 Candidates." 29 November 1998.

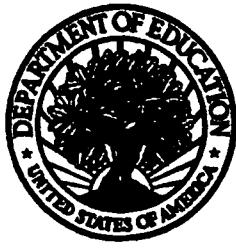
<sup>28</sup> Stowe Citizens for Responsible Government v. Vermont, Vermont Supreme Court decision, 4 March 1999.

<sup>29</sup> Stowe Reporter, September 8, 1999. <<http://www.stowereporter.com>>

<sup>30</sup> Steve Terry, former Rutland Herald editor, notes that Vermonters have a deep sense of fairness somewhat impervious to claims of political vested interests. See Steve Terry, "The Hoff Era," Center for Research on Vermont. University of Vermont, Burlington, 1989. 37 pages.

<sup>31</sup> For example, see the New York Times Sunday Magazine, 26 April 1998, pp. 42-45.

<sup>32</sup> Telephone interview with John Freidin, 3 May 1999.



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